

SPECIAL CIVIL APPLICATION NO. 3396 OF 1986

Date of decision: 21-3-1996

For Approval and Signature

The Hon'ble Mr. Justice S. K. KESHOTE

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.K. KESHOTE, J
(21-3-96)

Mr. P.K. Jani for the petitioner.
None present for the respondents.

ORAL JUDGMENT:

The petitioner has challenged the judgment and order dated 28-8-1985 of the Gujarat Civil Services Tribunal passed in Appeal No.515 of 1982, as well as the order annexure-E dated 19-6-1986 passed by respondent No.2. The petitioner was appointed as driver in the office of respondent No.2 on 11-8-1971. Earlier to this he was working as work charge driver since 1-3-1957. He was given selection grade of driver with effect from 16-6-19781.

2. Shri V.O. Thakor, another employee of respondent No.2 who was appointed at a later point of time as work charge driver, i.e. on 14-10-1958, was not granted selection grade. Both the petitioner and Shri Thakor retired from service on 31-8-1984 and 31-1-1982 respectively. Though the petitioner was appointed as work charge driver earlier than Shri Thakor, the petitioner was brought on temporary establishment later in point of time due to his dismissal from service on account of some criminal case. He was subsequently acquitted in the criminal case and thereafter he was reinstated back in service. Taking benefit of this fact Shri Thakor filed appeal before the Gujarat Civil Service Tribunal claiming selection grade of driver from 16-6-1981, the date on which the petitioner herein was given selection grade. If the matter is considered from the date of appointment on work charge establishment, certainly the petitioner was senior to Shri Thakor and in normal course he should have been taken earlier to Shri Thakor on the temporary establishment.

3. In the present case it is not necessary to probe into this question any further because the writ petition deserves to be accepted only on the ground that the Tribunal has passed the order for taking away the selection granted to the petitioner though the petitioner was not a party to the appeal and the order has been passed without giving the petitioner an opportunity of hearing. The order of the Tribunal is understandable to the extent that Shri Thakor be given selection grade from 16-8-1981, but it is difficult to conceive that while giving selection grade to Shri Thakor, the benefit given to the petitioner should be taken back and the petitioner should be given selection grade from 31-1-1982 i.e. from the date on which Shri Thakor retired from service. The petitioner was given selection grade long back and it had remained unchallenged by Shri Thakor. In absence of any challenge to the grant of selection grade to the petitioner, I fail to see any justification in the order of the Tribunal to set aside the selection grade given to the petitioner as it adversely affected his pensionary benefits as well as the pay during the interregnum. The order of the Tribunal which is passed in violation of the

principles of natural justice is a nullity and it cannot be given effect to.

4. In the result the writ petition succeeds. The order of the Gujarat Services Tribunal dated 13-9-1985 produced at annexure-B to the petition is set aside to the extent it relates to the petitioner's rights. It is necessary to mention here that this Court had stayed the order of the Tribunal and as such the same was never given effect to. Rule made absolute accordingly. No order as to costs.